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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,891	10/21/2003	Michael S. Brown	UTSD:1515	6568
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242 AVE VISTA DEL OCEANO SAN CLEMEMTE, CA 92672			ART UNIT	PAPER NUMBER
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SHORTENED STATUTOR	Y PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE	
31 DAYS		01/16/2007	PAPER	

# Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, PROM THE MAILING DATE OF THIS COMMUNICATION.  Exercition of the interval was been admitted to the provided of the provided will apply and will expire SIX (8) MONTHS from the mailing date of this communication.  Failur to reply which the set or schedded period for regive is specified above, the maintenin statutory period will apply and will expire SIX (8) MONTHS from the mailing date of this communication.  Failur to reply which the set or schedded period for regive is specified above, the maining date of this communication, even if brinsy lited. May reduce sky searched period for regive is specified above, the maining date of this communication, even if brinsy lited. May reduce sky searched period for regive is specified above, the maining date of this communication, even if brinsy lited. May reduce sky searched period for regive is specified above, the maining date of this communication, even if brinsy lited. May reduce sky searched period for regive is specified above, the maining date of this communication, even if brinsy lited. May reduce sky searched period for regive is specified and the communication.  Status  I) Responsive to communication(s) filed on		Application No.	Applicant(s)				
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This action is FINAL.   2b  This action is non-final.   3    This action is FINAL.   2b  This action is non-final.   3    Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.	<ul> <li>WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any</li> </ul>						
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Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  10 Notice of References Cited (PTO-892)  21 Notice of Draftsperson's Patent Drawing Review (PTO-948)  22 Notice of Draftsperson's Patent Drawing Review (PTO-948)  23 Information Disclosure Statement(s) (PTO/SB/08)  24 Interview Summary (PTO-413)  25 Paper No(s)/Mail Date  5 Notice of Informal Patent Application  6 Other:  5 On Other:	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
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#### **DETAILED ACTION**

#### Election/Restrictions

Restriction to the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 (in part), 2-3, 6-8 are drawn to a method for reducing permissiveness of human cells to replication of a hepatitis C virus by contacting the human cells with a selective inhibitor of HMG CoA, classified in 514/427.
- II. Claims 1 (in part), 2-3, 11-13 are drawn to a method for reducing permissiveness of human cells to replication of a West Nile virus by contacting the human cells with a selective inhibitor of HMG CoA, classified in 514/506.
- III. Claims 1 (in part), 4-6, 9-10 are drawn to a method for reducing permissiveness of human cells to replication of a hepatitis C virus by contacting the human cells with a selective inhibitor of geranylgeranyl transferase I, classified in 514/510.
- IV. Claims 1 (in part), 4-6, 11, 14-15 are drawn to a method for reducing permissiveness of human cells to replication of a West Nile virus by contacting the human cells with a selective inhibitor of geranylgeranyl transferase I, classified in 514/510.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, III and II, IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are drawn to a method for reducing permissiveness of human cells to replication of a hepatitis C virus or a West Nile virus. The search for one will not lead to the search of the other. Because these inventions are distinct for the reasons given above and the search required for one invention is not required for another, restriction for examination purposes as indicated is proper.

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Inventions I, II and III, IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the different inventions, inhibitors of HMG CoA reductase and inhibitors of geranylgeranyl transferase I are totally different compounds. Statins and the disclosed inhibitors of geranylgeranyl transferase I have different structures, thus leading to different reactivity, binding affinity, mechanism, stability, polarity, bioavailability, efficacy, solubility, and modes of action. Furthermore, the search for statins will not lead to information regarding the disclosed inhibitors of geranylgeranyl transferase I, and vice versa. Because these inventions are distinct for the reasons given above and the search required for one invention is not required for another, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

## Species Election

This application contains claims directed to more than one species of the generic invention.

The species are as follows:

- 1) a single disclosed inhibitor of HMG CoA, for example atorvastatin
- 2) a single disclosed inhibitor of geranylgeranyl transferase I, for example GGTI-286

If applicant elects Inventions I or II, applicant is further required to elect a single disclosed inhibitor of HMG CoA from subsection 1. Currently, claim 3 is generic to a plurality of disclosed patentably distinct species.

If applicant elects Inventions III or IV, applicant is further required to elect a single disclosed inhibitor of geranylgeranyl transferase I from subsection 2. Currently, claim 5 is generic to a plurality of disclosed patentably distinct species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Note the court in *In re Herrick et al.* and *In re Joyce et al.* (both at 115 USPQ 412) held that an election of species requirement was, in fact, a restriction requirement.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

A telephone call to the attorney is not required where: 1) the restriction requirement is complex, 2) the application is being prosecuted pro se, or 3) the examiner knows from past experience that a telephone election will not be made (MPEP § 812.01). Therefore, since this restriction requirement is considered complex, a call to the attorney for telephone election was not made.

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong S. Chong whose telephone number is (571)-272-8513. The examiner can normally be reached on M-F, 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SREENI PADMANABHAN can be reached on (571)-272-0629. The fax

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phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**YSC** 

SPEENI PADMANABHAN
SUBERVISORY PATENT EXAMINER